



Dasos Foraois Management Ltd.
c/o CSI Chartered Accountants,

8th June 2026

Subject: Appeal FAC 089/2024 regarding CN94436

Dear Sir,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (The Minister). The FAC established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statement of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and, in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN94436.

THE LICENCE.

Licence CN94436 is for the Afforestation of 39.87 Ha. of land in one plot comprising of FT 12 (Mixed high Forest with mainly spruce and 20% Broadleaves) in the townland of Kilknockane, Co. Cork.

The application for the licence CN94436 was published on the Forestry Licence Viewer (FLV) on 15/04/2024. A decision approving the licence was issued on 28/08/2024 subject to a number of conditions including Standard planting conditions, compliance with the Environmental Requirements for Afforestation and the Forestry Standards Manual, compliance with the mitigation measures in the Appropriate Assessment Determination, set back and planting to the public road to the west of the site and farm lane to the south of the site, set back and planting to water features and hedgerows.

FORESTRY APPEALS COMMITTEE.

Appeal Ref: FAC 089/2024 against the decision to grant licence CN94436 as dated 28/08/2024 was considered by a division of the FAC at a hearing held remotely on the 5th of May 2026. The FAC members present were:

FAC Members: Mr. Myles Mac Donncadha (Deputy Chairperson), Mr. Vincent Upton & Mr. Iain Douglas.
Secretary to the FAC: Mr. Radoslaw Wojtczak and Mr. Michael Kirwan (Non-participating).

At the sitting the FAC had before it the DAFM record of the decision as published on the Forest Licence Viewer (FLV), the notices and grounds of appeal, a Statement of Fact (SoF) provided by the DAFM and a post-appeal submission from the Appellant.

BACKGROUND.

The site is located some 8.5 km north of the town of Kanturk Co. Cork. The site is bounded by the Knockilly Stream on the north, by a public road to the west and by enclosed agricultural land on the east and south.

The soils on the site are described as being 98% Surface water Gleys & Ground water Gleys and 2% Acid Brown Earths & Brown Podzolics. The average slope across the site is described as moderate, at 3% and ranges from 0% to 12%. The Applicant's Current Environment & Habitat Map dated 26/02/2024 describes the habitat on site as Wet Grassland (Fossil GS4) with grass and soft rush being the dominant species (however see below).

The site lies in the Water Framework Directive (WFD) Blackwater (Munster) Catchment and the Dalua_SC_020 Sub-catchment and is 100% within the Allow_050 River Sub-Basin. The nearest WFD River Waterbody is the Allow_050 (EPA name Knockilly Stream) which forms the northern site boundary and which was of Good Status in the 2019-2024 monitoring period and is Not-at-Risk. Forestry is not identified as a pressure on this river. The Groundwater body underlying the site is Rathmore West IE_SW_G_070 which was of Good Status in the 2019-2024 monitoring period and is Not-at-Risk. Forestry is not a pressure on this groundwater body.

The application documents before the FAC on the FLV comprised: a Location Map, a Bio-Diversity Map, a Fencing Map and a Current Environment & Habitat Map all dated 26/02/2024, a Site Notice dated 05/03/2024, a photograph of the site notice and an Inet Pre Approval Submission Report all uploaded to the FLV on 15/04/2024. A Natura Impact Statement dated 01/03/2024 and a Freshwater Pearl Mussel Assessment dated 05/03/2024 were both uploaded to the FLV on 23/07/2024.

The licence application was referred to Inland Fisheries Ireland (IFI) on 16/04/2024 which responded on 18/04/2024 stating that it had no objection to the proposed afforestation providing that there was compliance with the Forestry and Water Quality Guidelines for Sensitive Waters, that particular attention was given to drainage construction, that there should be no aerial fertilisation where ground preparation and planting were liable to result in the release of nutrients to receiving waters, and that where there was no existing bankside broadleaf cover, broadleaves should be planted in a staggered pattern.

The licence application was referred to Cork County Council and the National Parks & Wildlife Service (NPWS) on 18/04/2024. There is no record of a response from the county council. The NPWS responded on 13/06/2024 referring to the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) and the importance of that SAC for the Freshwater Pearl Mussel (FPM) and that any NIS/AA should ensure that the proposal would not have adverse impacts on the SAC through effects on quality (such as through sedimentation) and that it is compatible with the Conservation Objectives (COs) for the SAC Qualifying Interest (QI) habitats and species (including those relating to restoring the favourable conservation condition of the Freshwater Pearl Mussel (FPM) in the Blackwater River (Cork/Waterford) SAC)). The NPWS further observed that cumulative impact and in-combination effects assessments within this project's NIS/AA will be important and that in-combination effects can occur where a project results in individually insignificant effects that, when considered in combination with impacts of other proposed or permitted projects or plans, can result in significant effects. It also references that 150m of hedgerow does not appear to be proposed for retention and that the HNVf part of the application was not fully

completed. The NPWS submission highlighted the setback requirements for FPM waters and hedgerows, that the proposed site consists of wet grassland/semi-improved grassland HNVf and that the site is also used by foraging kestrel.

The DAFM documents before the FAC on the FLV comprised: an Appropriate Assessment Screening Report & Determination (AASRD) and an AASRD In-combination Report, dated 21/06/2024 both uploaded to the FLV 23/06/2024, an Appropriate Assessment Determination (AAD) and AAD In-combination Report both dated 21/06/2024, an Inspector's Certification Report and an Assessment to Determine EIA Requirement Report both dated 27/08/2024, a Site Plots - Pre Approval Report and a Site Details - Pre Approval Report all uploaded to the FLV 28/08/2024

SUBMISSIONS.

The FLV records that there was one third-party submission on the licence application.

APPROPRIATE ASSESSMENT.

The DAFM AASRD of 21/06/2024 screened three Natura 2000 sites within 15 km of the proposed afforestation, the Blackwater River (Cork-Waterford) SAC (Site Code 002170), the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161) and the Lower River Shannon SAC (Site Code 002165). The AASRD concluded that Blackwater River (Cork-Waterford) SAC should proceed to Appropriate Assessment (AA) Stage 2 due to the hydrological connectivity between the site and the SAC.

The AASRD indicates that the applicant's NIS dated 01/03/2024 and submitted on 21/05/2024 was taken into account in undertaking the screening for AA.

The NIS was put on public display 24/07/2024, no submission resulting from the public consultation was recorded.

ENVIRONMENTAL IMPACT ASSESSMENT.

The FAC noted that the *Assessment to Determine EIA Requirement* is a document used by the DAFM for EIA screening and that the DAFM determined that EIA was not required. In reviewing the *Assessment to Determine EIA Requirement* of 27/08/2024 the FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an Environmental Impact Assessment Report (EIAR) was required having regard to the nature, scale, and location of the proposal.

THE APPEAL.

There is one third-party appeal against the decision to approve the afforestation licence. The Notice of Appeal and full grounds of appeal were provided to the parties.

The grounds of appeal are summarised as:

1. The Article 6(3) of the Habitats Directive Assessment does not contain precise and definitive findings and a conclusion capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.
2. The determination that an Environmental Impact Assessment is not required is not adequately reasoned.
3. The Department has failed to apply a strict system of protection for species listed in Annex IV of the Habitats Directive.

4. Summary.

Minister's Statement.

The DAFM submitted a Statement of Fact (SoF) dated 30/09/2025 in response to the appeal. The SoF provides an overview of the decision-making procedure and a response to the grounds of appeal, a full copy of the SoF was provided to the parties.

In summary the SoF submits that:

- (a) The decision was made in accordance with DAFM procedures, SI 191 of 2017 and the 2014 Forestry Act (as amended).
- (b) The SoF response to the grounds of the appeals is summarised as follows:

1. Appropriate Assessment.

- The AA procedure is outlined and given that the Applicant submitted a NIS voluntarily a DAFM Appropriate Assessment Report (AAR) was therefore not required.
- The Commission Notice "*Assessment of Plans and Projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC 2021/C 437/01*" is not a legally binding document and that it is for individual Member States to decide how to put in place the procedural requirements deriving from the Directive.
- NPWS response was primarily focused on what should be considered in the Appropriate Assessment Report/Natura Impact Statement namely the Blackwater River (Cork/Waterford) SAC (Site Code: 002170) and specifically, Freshwater Pearl Mussel. Mitigation measures are outlined in the NIS to protect water quality. The Blackwater River (Cork/Waterford) SAC (002170) was screened-in and addressed in the NIS and that the concerns of NPWS were addressed in the Appropriate Assessment.
- The Biomap is missing a green line on one of the hedgerows, but the base map is an aerial photograph, and the hedgerow is clearly visible. In addition, the NIS (Fig. E) shows the hedgerow and that the NIS was advertised for public consultation on the 24/07/2024, consequently, the hedgerow was available to the public to comment.
- The NIS covers an area greater than that of the project area submitted but that all of the area submitted in the licence application is within the boundary of the area covered by the NIS. The NIS states that an ecologist field inspected the site on 01/12/2023 and conducted a habitat survey and that the habitat description in the NIS, which is supported by a species list, is the definitive habitat description used in the assessment of the application.
- Both the Applicant's NIS and the DAFM AASRD screened out Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA based on distance and as such there is no conflict between the two documents.
- The timing of the field work is not an issue as the given that the project area was dominated by improved grassland. The Appropriate Assessment Screening stage can be informed by a non-statutory Pre-Screening Appropriate Assessment (AA) Report commissioned by the Applicant and submitted with the application.
- The NIS outlined potential significant effects in the absence of adequate and appropriate mitigation measures. A Freshwater Pearl Mussel Site Assessment was carried out and mitigation measures proposed were supplemented by those set out in Section 4 of the AAD.

- Given the time lapse between the NIS preparation (December 2023), its issue date (01/03/2024), and the AAD of (31/06/2024), it was deemed appropriate to assess the potential for in-combination effects again prior to the decision being made.
 - The AAD specifies mitigation for the aquatic zone, and relevant watercourses. The AAD describes the location of some features requiring specific mitigation while a number of the mitigation measures apply to the full site.
 - The Hen Harrier Threat Response Plan was prepared by the National Parks and Wildlife Service, Department of Housing, Local Government and Heritage, Department of Agriculture, Food and the Marine, and Department of Environment, Climate and Communication, not just the NPWS.
2. Assessment to Determine EIA Requirement.
 - The project area is below the threshold for mandatory EIA. The area of folio is irrelevant. It is the project area that is under consideration by the Department. An extract from the DAFM computer system illustrating the EIA conclusion is provided.
 3. Summary, Annex IV Habitats Directive issues.
 - The make-up of FAC is not a matter for DAFM to consider as part of a licence application.
 - Fees for appeals to the FAC are set down in Regulation 10 of the Forestry Appeals Committee Regulations 2020 (S.I. No. 418 of 2020) and are not a subject that applies to the conditions of a licence and are not subject to an appeal.
 - The appeal fee is legal, fair, equitable and not prohibitively expensive and fully compliant with DAFM's obligations under the Aarhus Convention and the ruling of the CJEU in Case C-216/05.
 - When a file is remitted to the Department by the FAC, it is the duty of the Department to fully re-examine the application.

CONSIDERATION BY THE FAC.

At its sitting on the 05/05/2026, the FAC considered appeal FAC 089/2024 and had before it the DAFM record of the decision as made available on the FLV, the Notice of Appeal Form and grounds of appeal, the SoF provided by the DAFM, the post-appeal submission from the Appellant and all materials on the FLV.

The FAC, having reviewed all the documentation and submissions, considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

The FAC considered the grounds of appeal under the following headings, Appropriate Assessment, Assessment to Determine EIA Requirement Report, Article 12 of the Habitats Directive (Annex IV species) Summary.

Appropriate Assessment.

The FAC considered the ground that the Article 6(3) or the Habitats Directive Assessment does not contain precise and definitive findings and a conclusion capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 1 of the DAFM SoF dated 30/09/2025.

With regard to the contention that there was no Appropriate Assessment of this application on the file. The FAC noted that the Applicant submitted an NIS and therefore a DAFM AAR was not required. The FAC also noted that there is on file an Appropriate Assessment Determination (AAD), Section 3 of which is titled "*Appropriate Assessment*" which the DAFM states that it had taken into account the NIS and a number of other sources of information in undertaking the Appropriate Assessment. However, the FAC

further noted that the DAFM AA did not rely on the Applicant's NIS as it altered several mitigation measures contained in the NIS and omitted others without explanation eg. the NIS mitigation measures regarding planting of native species adjoining the unplanted water setbacks are omitted.

The AAD states,

The NIS recommends setback from aquatic zone be left undisturbed and unplanted however Inland Fisheries Ireland requests, where there is no existing bankside broadleaf cover, that broadleaves be planted (in the staggered pattern as shown in document submitted on 18/04/2024) along those parts of the site bounded by watercourses.

However, this provision is not included in the measures stated. The FAC considers that this results in a lack of clarity and precision in the assessment process and as such was a serious error in the processing of the licence application.

With regard to the contention that the NIS for this project did not follow the requirements of Commission Notice 2021/C 437/01 *Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*. The FAC noted that the Commission Notice states that:

"This document presents the views of the European Commission and is not legally binding; only the Court of Justice of the European Union (CJEU) is competent to authoritatively interpret Union law." and

"Under the principle of procedural autonomy, it is for individual Member States to decide how to put in place the procedural requirements deriving from the directive."

With regard to the contention that the DAFM failed to address the comment from the NPWS that the NIS should include the future management of the proposed plantation. In considering this ground of appeal the FAC noted the response of Ground 1(b) of the DAFM SoF dated 30/09/2025. Under the Forestry Regulations 2017 the Minister for Agriculture is required to undertake a Screening for Appropriate Assessment and Appropriate Assessment, as required, in relation to afforestation, forest road works, aerial fertilisation and tree felling, and that these activities are subject to separate consent processes. The submission does not reflect the consent system established in law and contains errors such as suggesting that hedgerows would not be retained while the application states that hedgerows would be retained. The FAC noted that the DAFM is the competent authority for issuing forestry licences and that referrals to local authorities and other bodies is a matter for the DAFM. The submission from the NPWS is on file and specifically referenced in the AAD. It is clear that the DAFM had regard to the submission from the NPWS but the Minister is not bound by the views of the NPWS. The proposal is for the afforestation of land. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

With regard to the contention that there are conflicts between the NIS and the AA documentation. The FAC noted that the site boundary of application licence CN94436 is wholly contained within the site boundaries shown in the Applicant's NIS, furthermore the FAC noted that the NIS refers to a site of 39.9 Ha. and that application site is 39.87 Ha. the FAC considers the difference to be marginal and is essentially the same area, the FAC is satisfied that the findings of the NIS are valid for the site of the application licence. The habitat map, Figure E of the NIS, which was produced following a site inspection, identifies all the habitats within the site boundary of application licence CN94436. The FAC, having examined the

habitats identified in Section 3 of the NIS and described and depicted Appendix I -Habitat Survey of the NIS found that all identify Improved Grassland (GA1) as a habitat on the site is satisfied that the omission of Improved Grassland (GA1) in the DAFM AASRD habitat description is a serious error.

The FAC noted that Figure E of the NIS shows the area of Wet Grassland (GS4) as being limited to one field measuring ca. 2.2 Ha. on the south-western part of the site and a small portion of one of the fields in the north of the site while the *Current Environment & Habitat Map* submitted with the licence application shows the entire site as Wet Grassland (GS4) and that both would have been on public display at the same time. While a discrepancy exists between the map submitted with the application and the Natura Impact Statement, the FAC considers that the Natura Impact Statement is the definitive source of information regarding the Applicant's assessment of habitats on site and was prepared by an Ecologist and made available as part of the public consultation process. Nonetheless, the DAFM require an afforestation application to be accompanied by a habitat map and where the map contains significant errors, such as the apparent misclassification of much of the site, the DAFM should have sought that the mapping be amended. The FAC was satisfied that this constituted a serious error in the making of the decision.

The FAC noted that the Appellant contends that 150m of a hedgerow on the southern boundary of the site has not been identified on the Biomap therefore the mapping is not in compliance with Section 5(2) of the Forestry Regulations 2017. In considering this ground of appeal the FAC noted the response of Ground 1(c) of the DAFM SoF dated 30/09/2025. The FAC noted the Biomap of 25/02/2024 and the extensive network of hedgerows marked thereon, the FAC also noted that the hedgerow in question was identified on the marked on the NIS habitat map which was produced following a site inspection. It is also stated consistently in the application, including in the NIS, that hedgerows would be retained. The FAC considers the omission of the hedgerow to be a mapping error and taking into consideration mapping in the NIS and the mitigation measure that all existing hedgerows are to be retained and that the hedgerow in question has its own specific mitigation measures specified in the AAD the error is not considered to be serious.

The FAC having examined the reasons for screening out the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA in both the NIS and DAFM AASRD did not find an inconsistency as both screened out that SPA because of distance between the site and the SPA while the NIS elaborated on the unsuitability of the habitat on the site for Hen Harrier, the Qualifying Interest of the SPA. The screening undertaken by the DAFM states that the location of the site of the proposed afforestation, the nature of the proposed works (including associated operations and ancillary works); the European site together with its SCIs and conservation objectives, and potential sources and pathways relevant to this European site were considered in addition to the stated reasons.

The application has been assessed by two professional Ecologists one on behalf of the Applicant and one on behalf of the DAFM. The Appellant has not claimed to have any environmental or ecological expertise nor to have engaged such an individual in preparing the grounds, which are largely speculative.

With regard to the chronology of the DAFM AASRD. The Appellant questions why the DAFM undertook the AASRD after the Applicant's NIS. The FAC noted that under Article 19 of the Forestry Regulations 2017 it is mandatory for the Minister, as the competent authority, to conduct a screening for appropriate assessment.

With regard to the contention that there are discrepancies between the Freshwater Pearl Mussel Assessment and the AAD. The FAC noted the mitigation measures set out in Form B of the Applicant's

Freshwater Pearl Mussel Assessment and the mitigation measures set out in Section 4 of the DAFM AAD. The FAC further noted that the AAD mitigation measures call for a 25m. undisturbed setback from the stream flowing along the northern boundary (the hydrological connection to the Blackwater River (Cork/Waterford) SAC for which the Freshwater Pearl Mussel is a QI.) rather than the 10m setback proposed in the FWP Assessment and that this is explained as being due to the slope, soil and environmental sensitivity of that stream. The FAC noted Condition 5 of the Afforestation Licence requires compliance with the mitigation measures set out in the AAD dated 21/06/2024. The FAC noted that the quotation from the NIS referred to by the Appellant regarding impact on the hydrology is predicated on there being no mitigation measures to avoid such impact, however the FAC noted that the mitigation measures set out in the AAD are almost entirely for the protection of water quality.

With regard to the assessment of In-combination effects. The Appellant quotes the Applicant's NIS section 4.6.2 Cumulative/In-combination impacts, paragraph 3, and questions why the DAFM undertook its own In-combination Assessment. The FAC noted that the Minister, as the competent authority for Appropriate Assessment is required to consider in-combination effects as part of that Appropriate Assessment. The FAC noted that the two DAFM In-combination reports on file (including the AAD of 21/06/2024) refer to Cork County Development Plan 2014 and that the current Cork County Development Plan is the 2022-2028 development plan which came into effect on 06/06/2022 and therefore the In-combination Reports refer to an incorrect development plan. The FAC considers that reliance on an out-of-date development plan is a serious error in the processing of the licence application.

With regard to the Appellant's contention that a number of mitigation measures in the AAD lack precision and site specificity. The FAC noted that the Appellant has adduced no evidence as to which mitigation measures lacks precision and that in fact mitigation number one of the AAD is specific to the site, referring to the *"25-metre-wide water setback on either side of the aquatic zone adjoining the northern border."*

With regard to the reference in the NIS to the Hen Harrier Threat Response Plan 2024-2028. The FAC noted that the "Hen Harrier Threat Response Plan 2024-2028" is an inter-departmental plan was prepared by National Parks and Wildlife Service, Department of Housing, Local Government and Heritage, Department of Agriculture, Food and the Marine, and Department of Environment, Climate and Communications. The FAC also noted that the draft of the Hen Harrier Threat Response Plan 2024-2028 was published as the "Hen Harrier Threat Response Plan 2024-2028" and was open to public consultation from 12/01/2024 until 14/02/2024 and was therefore available as such in March 2024 when the NIS was published. The FAC does not consider an error in referencing documents in the NIS to be an error in the making of the decision.

As set out above, the FAC was satisfied that a serious or significant error or a series of errors was made in the making of the decision and that the decision should be remitted to the Minister.

Assessment to Determine EIA Requirement Report.

The FAC considered the ground that the DAFM determination that an EIA is not required is not adequately reasoned. In considering this ground of appeal the FAC noted the DAFM response marked as Ground 2 of the DAFM SoF dated 30/09/2025 particularly that the area of the proposed afforestation, at 39.87 Ha. is less than the than 50 hectares of afforestation specified in the Forestry Regulations 2017 as requiring mandatory EIAR.

With regard to the contention that the DAFM has failed to adequately reason why a sub-threshold EIA was not required for this project. The FAC noted that the *Assessment to Determine EIA Requirement* is a document used by the DAFM for EIA screening and that in the *Assessment to Determine EIA Requirement Report* dated 27/08/2024 the DAFM recorded a consideration of the application across a range of criteria relevant to the proposed afforestation including the cumulative impact of forestry in the area, environmental sensitivities such as water, soil, terrain, slope, designated areas, landscape, consultation bodies (notably the IFI and NPWS) and local concerns as expressed in the third-party submission on the licence application and determined that the project was not required to undergo the EIA process. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale, and location of the proposal. The document cross-references other aspects of the processing of the application by the DAFM and is clearly to be read and understood alongside the file as a whole.

With regard to the contention that the DAFM has not addressed recommendations of the NPWS that the AA should address the full life cycle of this commercial project. The FAC noted that the DAFM is the competent authority for issuing forestry licences and, that in the section of the Section 3 of *Assessment to Determine EIA Requirement Report* titled *Natural Resources: Referral Responses and Submissions*, the response to the question “*Were all of the referral responses received, and observations/recommendations therein, given due consideration?*” is “Yes” and that the NPWS submission is identified in that section of the *Assessment to Determine EIA Requirement Report*. The FAC is satisfied that the DAFM followed its own procedure. Furthermore, as this issue is directly related to the AA process, the FAC also noted that the DAFM in its AASRD, it sets out that the responses received from consultation bodies and submissions from third parties, including the NPWS, were taken into account and considered in the preparation of the AASRD.

In relation to the area of the proposal and the consideration of cumulative effects, the FAC found the grounds to be generally speculative. The record shows that the afforestation area as applied for, assessed and licenced, was below the threshold for mandatory EIA. There is no evidence before the FAC that the Applicant had split applications to avoid a mandatory EIA. However, the FAC noted that in considering potential cumulative effects the DAFM only had regard to forestry projects. The FAC would understand that the Minister in considering potential cumulative effects should have regard to other plans and projects, both forestry and non-forestry, as relevant. The FAC considered this to be a serious error in the making of the decision such that a new screening for Environmental Impact Assessment should be undertaken.

Article 12 of the Habitats Directive (Annex IV species).

The FAC considered the ground that the Department has failed to apply a strict system of protection for species listed in Annex IV of the Habitats Directive. The FAC noted that this ground is based on a quotation from Section 4.3 *Description of the Natura 2000 Site* of the Applicant’s NIS regarding bat species found in the Blackwater River (Cork/Waterford) SAC not the site of the proposed afforestation. The ground states that “*There has been no ecological assessment of the impact of the proposed project on these protected species which have been reported to occur on the site.*” The Appellant has adduced no evidence that the bat species referred to as being present in the SAC have in fact been reported as occurring on the site of the proposed afforestation or that any bat species could be impacted by the proposal. The proposal is for the afforestation of agricultural land, primarily improved grassland, with the retention of existing hedgerows.

The granting of the licence does not remove any protections provided under the Wildlife legislation in Ireland. The NPWS document that is referred to in the grounds relates to works undertaken by a public authority which does not describe the current proposal which is being undertaken by a private entity and the document also indicates that the granting of a permission does not remove the general protections afforded in law.

The FAC was not satisfied that a serious or significant error or a series of errors was made in the making of the decision or that the decision was made without complying with fair procedures in relation to these grounds.

CONCLUSION.

In considering the appeal, the FAC had regard to the record of the decision, the Notice and grounds of appeal, and the SoF submitted by the DAFM and post-appeal submission. The FAC considered the provisions of the Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 and the relevant legislation under which the decision on licence CN94436 was made. The FAC is satisfied that a serious or significant error was made in the process of making of the decision, and is therefore setting aside and remitting the decision of the Minister for Agriculture, Food and Marine to ensure the DAFM carries out a new Assessment to Determine EIA Requirement Report, a new Appropriate Assessment screening and Appropriate Assessment as required, and that the applicant submits a new Current Environment & Habitat Map and that all of the application documentation and updated applicant and AA screening information is published for public consultation, prior to the making of a new decision.

Yours sincerely,

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On Behalf of the Forestry Appeals Committee